

Exhibit 35

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 1

STATE OF WISCONSIN,

PLAINTIFF,

vs.

JURY TRIAL - DAY 24

CLOSING ARGUMENTS, CONTD.

Case No. 05 CF 381

STEVEN A. AVERY,

DEFENDANT.

DATE: MARCH 15, 2007

BEFORE: Hon. Patrick L. Willis
Circuit Court Judge

APPEARANCES: KENNETH R. KRATZ
Special Prosecutor
On behalf of the State of Wisconsin.

THOMAS J. FALLON
Special Prosecutor
On behalf of the State of Wisconsin.

NORMAN A. GAHN
Special Prosecutor
On behalf of the State of Wisconsin.

DEAN A. STRANG
Attorney at Law
On behalf of the Defendant.

JEROME F. BUTING
Attorney at Law
On behalf of the Defendant.

STEVEN A. AVERY
Defendant
Appeared in person.

TRANSCRIPT OF PROCEEDINGS

Reported by Diane Tesheneck, RPR

Official Court Reporter

1 a question. They are not advocating anything, as
2 far as I could pick up. Or as I say, sort of
3 selling you something, overselling something.
4 They are candid on cross-examination, just as
5 they were on direct examination. I thought, at
6 least, that's what this group of people shared.

7 Was I surprised that we had to call the
8 bus driver, rather than the State calling, to
9 help you with the time frame that afternoon,
10 yeah, I was surprised. But we did it, since they
11 didn't. And now you have got that information.

12 But, you know, these -- these people
13 rang true to my ear, at least. And it's your
14 ears that matter.

15 So let me move to my second question:
16 Can you believe the police? Can you believe the
17 law enforcement folks who are so sure that Steven
18 Avery's guilty? What do you see about their
19 behavior before they are on the stage here?
20 Well, look at what they say and do when they
21 don't know that you are going to be listening and
22 seeing.

23 Let's start with Andy Colborn, since I
24 sort of started with him on November 3. He calls
25 in, does a license check on Teresa Halbach's car.

1 He says he thinks it was probably on November 3,
2 not sure, but probably November 3, that he did
3 that. But remember he's working on November 3,
4 so he would have had his radio.

5 And it's Detective Remiker who says
6 ordinarily you would use your radio when you are
7 calling in a license check to dispatch. He uses
8 his cell phone instead. The tape you hear is
9 clearly a phone call, not a radio in. So I think
10 it's probably more likely that this license check
11 is November 4, when Sergeant Colborn acknowledges
12 he was off.

13 Didn't work on November 4. And you may
14 remember, Mr. Kratz asked him, do you remember
15 what you were doing on November 4, 2005. He
16 says, yes, I do. I was off. I remember what I
17 was doing. Doesn't tell you what he was doing,
18 other than to deny he went to the Avery Salvage
19 yard, or denied he had anything to do with
20 planting evidence. But he is off.

21 And I'm not going to play it for you
22 again, it's in evidence, but -- Let's see if this
23 comes up. That's -- That's what you hear on the
24 tape that we played.

25 SERGEANT COLBORN: Lynn.

1 DISPATCHER: Hi Andy.

2 SERGEANT COLBORN: Can you run Sam,
3 William, Henry, 582, see if it comes back to that
4 da da da da da -- then they start talking over
5 each other. I can't make it out. You can listen
6 to it if you want. Then she goes off on talking
7 about needing a Spanish interpreter, chitty
8 chatting while she's doing the license check.

9 She's comes back and she confirms it's
10 Teresa Halbach's license plate, the missing
11 person.

12 Sergeant Colborn says, '99 Toyota, and
13 so on.

14 Why is he doing that? Why is he doing
15 that? Why is he calling in a license check on
16 November 3, or November 4, which ever day it is?
17 You can get that information from Investigator
18 Wiegert, or if you want to call your dispatcher,
19 ask your dispatcher.

20 This sounds a lot like what road patrol
21 officers do when they come across a stalled car,
22 an abandoned car, a car where it shouldn't be.
23 That's what this sounds like. Draw your own
24 conclusions, obviously look at it like from any
25 other piece of evidence. But what's important is

1 he is doing this, not on a witness stand, he is
2 doing this when he doesn't know anybody is going
3 to be seeing, or hearing, or evaluating it later.

4 Stay -- Move off Sergeant Colborn, but
5 stay in the Manitowoc County Sheriff's Department
6 for the moment. Mr. Kratz argued to you
7 yesterday that Special Agent Fassbender, starting
8 November 5, devoted his resources where this
9 thing was likely going. Where this thing was
10 likely going.

11 True, I guess he did, in the sense that
12 it was certainly clear pretty quickly where this
13 thing, this investigation, was going. In my
14 opening, and with Detective Remiker, we had a
15 chance to hear, at 11:30 in the morning, on
16 November 5, half an hour after the first police
17 officers arrived at the Avery property, there to,
18 you know, see the concealed Toyota that the
19 Sturm's had found. Half an hour later, for you
20 to hear, at a time when he, you know, he wouldn't
21 have known it, Manitowoc detective, Dennis
22 Jacobs, talking to his dispatcher:

23 Can you tell me, do we have a body or
24 anything yet?

25 DISPATCHER: I don't believe so.

1 Very next thing he says:

2 Do we have Steven Avery in custody,
3 though?

4 Yeah, it's pretty clear where this is
5 going. By the time Special Agent Fassbender
6 arrives, you know, at 2:25, 3 hours later that
7 afternoon almost, it's pretty clear where it's
8 going. And five minutes after this one
9 conversation --

10 THE COURT: Mr. Strang, I'm getting a
11 signal for a break, so we're going to take a short
12 break and then we'll resume in 10 minutes.

13 (Jury not present.)

14 THE COURT: You may be seated. Let's
15 report back at 10:15.

16 (Recess taken.)

17 (Jury present.)

18 THE COURT: Mr. Strang, you may resume.

19 ATTORNEY STRANG: Thank you.

20 So five minutes later, five minutes
21 after Detective Jacobs called with the
22 dispatcher, he is on the phone with Detective
23 Remiker, or the radio, I don't remember now, but
24 you got the tape in evidence. Of course,
25 Detective Remiker does testify, and you may

1 remember him, kind of presented himself as
2 someone who thought they were barking up the
3 wrong tree, that Steve didn't do this, when he
4 testifies. That morning, just about an hour
5 after the Sturms have first found the Toyota.

6 Okay. Other than the car, do we have
7 anything else?

8 Not yet.

9 Okay. Is he in custody?

10 ATTORNEY STRANG: It's not who are you
11 talking about, who do you mean by he.

12 Negative, nothing yet.

13 One pronoun, he, and these guys know who
14 they are talking about at 11:35 in the morning.
15 Are these folks acting in a way that seems good
16 faith and honest to you, back then? Six days
17 after this, Special Agent Fassbender makes the
18 telephone call to Sherry Culhane at the Crime
19 Lab, try to give her some direction. And, you
20 know, she's holding herself out as a scientist,
21 that's how she holds herself out.

22 Is Special Agent Fassbender asking for
23 science, on the exhibit that Mr. Buting showed
24 you? Is he asking for science there, for a good
25 cautious, objective, let's see where the science

1 leads us kind of thing, when he's asking, try to
2 put her -- put her in his house or garage.
3 That's not a very good fit, in my view, with the
4 State's, counsel's argument here, when they
5 submit evidence, they are not looking for a
6 specific answer. Oh, really.

7 The memo belies that. The phone memo
8 does. And Sherry Culhane, on the stand, herself,
9 tells you, that by the time these buccal swabs
10 are taken in November, 2005, from all kinds of
11 people other than Steven Avery, members of his
12 family, these are elimination samples.
13 Elimination samples. We have already decided
14 they didn't do it, we're just trying to eliminate
15 if we find their DA -- their DNA anywhere.

16 Sherry Culhane, for that matter, had she
17 followed the protocol on her testing, the bottom
18 line folks, had she followed her protocol on the
19 testing of that bullet found in March. She can't
20 say it's Teresa Halbach's DNA. First time in her
21 career, 23 years, first time, on the last chance
22 to put Teresa Halbach in his house or garage, she
23 deviates from the protocol and includes Teresa
24 Halbach.

25 Now, it was just the control that was

1 contaminated. It was just Sherry Culhane's DNA.
2 That doesn't turn the evidentiary sample into
3 having Teresa Halbach's DNA. Okay. All right.
4 Fine. But the protocol presumably is there for a
5 reason. Protocols are the foundation of good
6 science. And the protocol says, if you have got
7 contamination, you set that experiment aside and
8 you do it again, you don't rely on that one.

9 Science ought to be reliable. It ought
10 to be consistent. And it ought to be cautious,
11 otherwise, it's not science. And the results
12 simply aren't reliable. That's why you have a
13 control. And when you get contamination, you now
14 know that something has gone wrong with this.

15 And to say that the contamination is
16 over here, but not over here, is a little like
17 saying, I don't know, maybe no one even eats TV
18 dinners any more, maybe they're microwave dinners
19 now, I guess, from what I see in the grocery
20 store. But whatever, however you heat this stuff
21 up, when you pull off the plastic, or the tin, or
22 whatever covers the meal, you know, and the
23 little peach cobbler has a fly in it, in that
24 little compartment, you don't eat the Salisbury
25 steak either, okay. You know, this is -- this is

1 not fancy stuff in the end. It's -- It is and
2 should be common sense, at some level, in the
3 end. But she deviates, for the first time in 23
4 years.

5 The end -- This continues, the end of
6 January, 2007, bringing us up to six weeks ago.
7 Now, the State goes all the way to Virginia, to
8 Quantico, to get the FBI. Are they trying -- Is
9 the FBI trying to root out possible police
10 corruption? Are they concerned about the
11 integrity, of policing in northeastern Wisconsin?
12 Trying to find out if there's a bad cop or not?
13 I think the decision is already made.

14 You have this, too, Special Agent Gerald
15 Mullen of the FBI, memo to the FBI laboratory,
16 this January 30th --

17 ATTORNEY KRATZ: Judge, I'm sorry, I don't
18 mean to interrupt. I believe the defense is
19 entitled to one closing. Mr. Buting covered exactly
20 the same territory yesterday. I understood they
21 were going to split and talk about different items.
22 I simply wanted to interpose an objection. My
23 apologies to counsel, but that was my understanding
24 from the Court.

25 ATTORNEY STRANG: I would be more concerned

1 about boring you. Mr. Buting did cover it. It's
2 there.

3 But I want to say something about EDTA
4 that Mr. Buting did not. Janine Arvizu, who is
5 not a doctor, Mr. Buting misspoke, she didn't
6 complete her dissertation. She did the other
7 Ph.D. work. I want to make sure you got out of
8 that what she had to tell you. And it's this,
9 the FBI protocol that they put together in a
10 couple of weeks here, is good for identifying and
11 confirming the presence of EDTA. It is not
12 designed for confirming the absence of EDTA. It
13 has to do with the detection limits. The
14 instrument has a detection limit and the method
15 has a detection limit.

16 So, look, if you were interested in
17 finding out whether your friend is at home, and
18 the instrument you chose was a telephone, call
19 him at his house, ring his telephone number, if
20 he answers the phone, you have confirmed his
21 presence with your instrument. He is there, you
22 have called his home, not his cell phone, he is
23 there. He's got to be, if he's answering his
24 phone. You have confirmed his presence.

25 However, if your instrument is your

1 telephone and you call his home and it just rings
2 and rings, and it's not answered, you have not
3 confirmed his absence. He could be in the
4 shower. He could be in the basement folding the
5 laundry, he could be in bed sleeping. He could
6 be pouting and just not answering the phone
7 because he sees it's you calling on the caller ID
8 and he doesn't want to talk to you today.
9 Whatever it is, you haven't confirmed his absence
10 with the telephone. You haven't designed a
11 protocol to get you to that.

12 Your method, in other words, of
13 detection, isn't suited to confirming absence,
14 only presence. If you like fresh baked hot apple
15 pie, and I put you in a room and I blindfold you
16 and we walk in, a fresh baked hot apple pie, your
17 nose is the instrument. It has a detection
18 limit.

19 A dog has a better instrument, lower
20 detection limit, fancier instrument. He can
21 detect less of the smell of apple pie than you
22 can, but you have got this instrument to use. If
23 it's within your detection limits, and the pie
24 is, you know, slid on the table under you while
25 you are blindfolded, you will detect it with your

1 instrument.

2 However, if the method is no good,
3 because we have got to consider that, you are not
4 smelling an apple pie. Well, is the room too
5 big, are the windows open, is the pie too far
6 away, does the room smell badly of something else
7 that's interfering with your instrument detecting
8 the fresh baked apple pie? We have method
9 detection problems and limits. Or is the apple
10 pie, not fresh baked, but it's an 11 year old
11 apple pie? You may not detect that either, with
12 your instrument. I don't think Janine Arvizu was
13 really telling you more than that. And,
14 unfortunately, Dr. LeBeau was trying to tell you
15 more than that and overselling his case.

16 Now, others who matter, in the law
17 enforcement group who think Steve is guilty.
18 Mr. Lenk and Mr. Colborn. They denied here, of
19 course, but what are they doing, in 2002, when
20 the evidence slip has to be signed for
21 transmission of the hair sample and fingernail
22 clippings, or whatever it is, to the Crime Lab,
23 and the evidence custodian at the time, Detective
24 Sergeant James Lenk, signs off.

25 Is he really, as he claims here, simply

1 signing the form, giving it to Sergeant Shallue
2 and allowing Sergeant Shallue to fill out the
3 otherwise blank form? You are entitled to
4 disbelieve that. Or at least to say he's not an
5 honest evidence custodian if he is doing that at
6 the time. He is begging to be fired, because he
7 is not documenting what's going where. Or if
8 he's just telling you here, to distance himself
9 from that file in the Clerk's Office, you are
10 entitled to consider that too.

11 Would Lieutenant Lenk lie, in the end?
12 Would he lie, as a sworn law enforcement officer?
13 Well, all I can tell you is, he did, twice, and
14 you heard it. I have the transcript from the
15 earlier hearing. Here he says he arrives at
16 2:00. When he's asked under oath before, it's
17 6:30 or 7, once when he's asked, and the other
18 time he's asked, it's late afternoon. This isn't
19 15 minutes off, folks. It's under oath and it's
20 a difference of four and a half or five hours.

21 At that time of year, November, 2005,
22 it's the difference between broad daylight and
23 pitch black. He was under oath, and he gave two
24 very different answers to the same question, at
25 two different times, under oath. He was the only

1 witness, in five weeks, shown to have made
2 inconsistent statements, under oath.

3 Others made inconsistent statements and
4 were shown to have. Blaine Dassey comes to mind.
5 Scott Tadych comes to mind. Both of them are
6 asked, at first, by the police, was there a
7 bonfire, on Halloween, no, no bonfire. Later
8 they get asked again, now there is a bonfire. In
9 fact, Scott Tadych comes here and says big
10 bonfire, flames to the top of the roof. Same
11 guy, again, I showed, when first asked by the
12 police, no bonfire. Closer in time to October
13 31, no, didn't see a bonfire that night.

14 That's inconsistent statements, but they
15 are not under oath. They still, as the Judge
16 instructed you yesterday, are something you can
17 consider, consistency or inconsistency of a
18 witness' statements, over time. Still you can
19 consider those when you decide who you believe,
20 and not under oath.

21 Blaine explained that a little bit.
22 Explained his changes of his story. Well, the
23 police kept asking him. They didn't like the
24 answer, they asked him again. Got angry with him
25 and his mother, at the restaurant, when they

1 wouldn't reject Uncle Steve. Is that because
2 Blaine is scared of Uncle Steve?

3 My recollection, yours will govern,
4 there's 12 of you and one of me, but my
5 recollection of that testimony is that the
6 question was whether Blaine Dassey was scared,
7 and the answer was something like, no, not
8 really, but he used to boss us around. You will
9 decide that.

10 But in any event, Lieutenant Lenk, by
11 the time he gets to you folks, is telling you
12 some really implausible things. Like, I had
13 never been to Steven Avery's house. I have never
14 been on the Avery property, but somehow, just out
15 of habit, I turned right at the end of Avery
16 Road, and I -- I -- I just happened to drive
17 straight to Steven Avery's trailer. Okay.

18 So this -- You know, what they are doing
19 and whether -- whether you think you can trust
20 them back when they are not aware they are going
21 to be observed or revealed later, is important in
22 the same way what he does, back before he knows
23 it's going to be played out to you, is important
24 in assessing who you believe. Are they acting
25 honestly? Is he acting like an innocent person

1 would act, or might act?

2 It is important because it comes down to
3 the bias in the end. You know, would, in the
4 end, police officers plant evidence? And that's
5 a hard one, you know. That's why it's helpful to
6 say, boy, are they behaving honestly and in good
7 faith up to then. Because in the end, would they
8 plant evidence against someone. Now, you will
9 have to decide whether you have a reasonable
10 doubt about that, or whether, you know, we have
11 shown that to you at any level, or not.

12 But, look, it is a matter of bias, if it
13 happened. And what you critically, I think, need
14 to understand, that if and when police officers
15 plant evidence, they are not doing it to frame an
16 innocent man. They are doing it because they
17 believe the man guilty. They are not doing it to
18 frame an innocent man. They are doing it to
19 ensure the conviction of someone they have
20 decided is guilty.

21 That's why you plant evidence. Other
22 than in the strangest, you know, most abandoned
23 of conscience sort of police officer, they aren't
24 after framing an innocent person, they are after
25 ensuring the conviction of someone they just

1 believe is guilty.

2 So as you approach the whole concept of
3 planting you have got to understand the bias that
4 would drive it, not, you know, boy, they are out
5 to get an innocent guy. It's just the opposite.
6 It's just the opposite. But it's also just as
7 corrosive to do it. Because juries decide guilt,
8 not police officers who are involved in the hunt.
9 You know, they get invested too, in the outcome,
10 and in whom they suspect, who they think is good
11 for something.

12 And, you know, the State pooh-poohs the
13 idea that a civil lawsuit, for a whole lot of
14 money, against the Manitowoc Sheriff's
15 Department, would have caused anyone to so
16 dislike Steven Avery that they would plant
17 evidence against him. Well, look what the mere
18 suggestion that they did plant evidence has done,
19 in terms of a reaction here.

20 The defensiveness of the case that the
21 State presented to you, the anger about the mere
22 suggestion of planting evidence, the
23 self-righteousness, the hostility, the trying to
24 have it both ways with you. We trusted the
25 Manitowoc people, they were skilled. They were

1 honest. They were the best available evidence
2 technicians.

3 But we also had somebody watching. We
4 were short of manpower. We needed them. But, in
5 the first search of Steven Avery's -- first
6 lengthy search of Steven Avery's house, on the
7 evening of November 5, we got enough people that
8 two of them can be taking photos. Two of them
9 can be taking photos, in this little trailer, as
10 you heard. You hear the State trying to have it
11 both ways, here.

12 And in sort of getting at the bias that
13 would drive a police officer, potentially, to
14 plant evidence, it's this -- it's this need, this
15 belief that he is not really innocent. He's
16 guilty, he's got to be guilty. It's what you
17 hear from Detective Jacobs and Detective Remiker,
18 it's that quality. It's the sense that this is
19 where this is going, three hours in, when all we
20 have got is the car, on a big property with a
21 whole lot of other people there.

22 It's the -- After five weeks of evidence
23 and 501 exhibits, it's the State standing up and
24 telling you it's clear. What in the world is
25 clear and simple when it takes five weeks and 501

1 exhibits to try to show. And whatever this is,
2 whatever, whichever way you come out, this case
3 isn't clear and simple.

4 And that's where the civil lawsuit feeds
5 in. It's not that it feeds in with bad cops. It
6 feeds in with good cops, in the sense that it
7 erodes, fundamentally, the sense of identity, we
8 get the bad guys, we don't get the good guys.

9 And here it is, they got it wrong, that
10 department got it wrong. Not only do they get it
11 wrong, but the right guy is still out there and
12 he commits another rape, Gregory Allen. This
13 goes to my identity, if I wear that same uniform.
14 Even if I'm aligned with these people, as you
15 hear the sort of reaction from the prosecutors to
16 this.

17 And now, you know, since -- since he
18 really couldn't have been that innocent, he's got
19 to be guilty of this one. He must be the right
20 guy this time. So you -- you know, nobody means
21 to do this, but you start looking around things
22 that are inconvenient, that don't quite square up
23 with the theory that he did it.

24 One example, and one example only, from
25 the blood, Teresa Halbach's blood in her own car.

1 If it were true, as the State now says, that
2 Steven Avery shot Teresa Halbach in his own
3 garage, killed her there, and if it were true
4 that he then burned her in the area immediately
5 behind the garage, why, why is her bloody head
6 ever in the Toyota at all. It's farther to take
7 her back to her car than it is to take her around
8 the corner of your garage, to the burn site, if
9 that's what it is.

10 So the State sort of ignore's the fact
11 that if Steve Avery had done it, and done it in
12 the way they say, her blood wouldn't be in the
13 car. The bloody hair stain wouldn't be there.
14 It is there, of course, so it suggests that
15 somebody did have to use the car as a transport.
16 She wasn't burned there -- or wasn't killed
17 there, but that's inconvenient. You guys have to
18 be, in the end, if you're going to do what you
19 can do here, more objective than that.

20 You can't overlook the inconvenient,
21 because it doesn't fit. You can't overlook, for
22 example, in deciding whether Lieutenant Lenk
23 dropped the key on the floor, rather than finding
24 it honestly.

25 You can't overlook the fact that all her

1 physical evidence applies equally to the State as
2 it does to the defense.

3 We know that because the defense has
4 subpoenaed some witnesses. They have brought
5 some witnesses in here. They have subpoenaed
6 some documents, and you have seen those
7 subpoenaed documents in this case.

8 Well, don't you think, folks, that if
9 either Sergeant Colborn or Lieutenant Lenk had a
10 pimple, had a blemish on their record for
11 truthfulness, or for honesty, or for planting
12 evidence, or for doing anything that was opposed
13 to the oath that they took to uphold the law in
14 Manitowoc County, don't you think you would have
15 heard about that. Don't you think that those two
16 good lawyers, excellent, in fact, defense
17 attorneys, would have presented that to you.

18 So when Mr. Strang tells you to look at
19 the big picture, and when he talks about, let's
20 see how they acted beforehand, beforehand you
21 didn't hear any evidence at all about Mr. Lenk or
22 Mr. Colborn. That is significant. But as
23 significant is the facts and circumstances
24 surrounding this particular bedroom.

25 And when Mr. Kucharski, Deputy

1 Kucharski, talked about sitting on this bed, and
2 actually facing towards the door, his feet, I
3 think the testimony was, were facing where the
4 key ends up when Lieutenant Lenk exits the room
5 and comes back. Don't you have to kind of ask
6 yourself the question, how did the key get there?

7 If it was planted, how did that key get
8 there? Did Lieutenant Lenk, as he's walking
9 here, throw it? Did he kind of lob it over
10 Mr. Kucharski. Well, that's ridiculous.
11 Absolutely ridiculous. And although all three of
12 these officers, and in fact the prosecution team,
13 would have preferred, obviously, that the key
14 wouldn't have been found in this way, it was.
15 All right.

16 Cases come to you how they are. And
17 again, under the microscope of a case of this
18 magnitude, there is going to be some human
19 factors. And there's going to be some things
20 that you are going to have to wrestle with. And
21 this is one of those things. I'm not going to
22 short change you on that particular case.

23 And you may take a long time in deciding
24 whether or not that key is significant, or
25 whether the key is not significant. But let me

1 ask you, just kind of for the sake of talking, as
2 Mr. Strang wanted to talk with you rather than at
3 you, I certainly have a style that I would prefer
4 that as well. Let's assume they never found the
5 key. Let's assume this key isn't part of this
6 case at all.

7 Let's assume Mr. Strang's theory is
8 correct, that these cops aren't trying to plant
9 an innocent person, but trying to make sure that
10 a guilty person is found guilty. Well, can't you
11 then, with that argument, set the key aside? Do
12 you have the ability, as a jury, to set that key
13 aside, if in fact it doesn't matter whether or
14 not Mr. Avery is guilty or not guilty in this
15 analysis? Can you set that aside and decide is
16 there enough other evidence, or is the key the
17 only thing that points to Mr. Avery?

18 Well, if this was a CSI case, one of
19 those cases on TV where sometimes that key, or
20 sometimes one little piece of evidence like that
21 may decide the guilt or innocence, it would make
22 a difference. But that key, in the big picture,
23 in the big scheme of things here, means very
24 little. All right.

25 Now, I'm telling you that not because I

1 don't want you to consider it, not because I
2 think that it's not important, or not because the
3 credibility of these officers is in question to
4 the State at all. What I am suggesting, though,
5 is that if you buy Mr. Strang's argument, if you
6 buy Mr. Strang's argument that they were trying
7 to make sure that a guilty person was found
8 guilty, then assigning accountability to the
9 murder for Teresa Halbach, shouldn't matter
10 whether or not that key was planted.

11 In other words, it shouldn't matter to
12 the Halbach family. You shouldn't be punishing
13 the police officers, in other words, the other
14 officers that were involved in this
15 investigation, if you come to that conclusion.
16 You are not going to. You are not going to come
17 to that conclusion because you have heard nothing
18 about these police officers that they would do
19 such a thing. But my suggestion is simply not to
20 focus all your attention.

21 In the law, that's called searching for
22 doubt. The Judge has told you, and may even tell
23 you again in your closing instruction, that you
24 are to search for the truth, you are not to
25 search for doubt. In other words, you don't go

1 one is that the defendant killed her and burned
2 it, and the other one, I guess, the defense wants
3 you to just come up with on your own.

4 That brings me to the conclusion, or the
5 last question, and that's, did the cops kill
6 Teresa Halbach. Again, the defense says no. But
7 if the cops had her blood, if the cops had her
8 bones, and before the 5th, if the cops knew she
9 was dead, let me say that again, if before the
10 5th the cops knew that Teresa Halbach was dead,
11 they were either told that by the real killer, or
12 they killed Teresa Halbach.

13 You have got to be willing to accept one
14 of those scenarios. And I don't think you can.
15 And I don't think you should. And I don't think
16 that the evidence points to that at all.

17 Mr. Strang, in his opening statement,
18 promised you what the defense was going to be.
19 Mr. Strang told you that it's no surprise that
20 the blood from an unsecured vial in the box in
21 the Clerk's Office, that Lieutenant Lenk examined
22 in 2002, ends up in the Toyota. At the start of
23 the case, that was what the defense was. That's
24 what the defense theory was. That's what the
25 defense said their theory of defense and what the

1 evidence was going to show in this case.

2 Vial planting, though, causes some
3 risks, risks to, what I'm characterizing as risks
4 to the defense. Because when you announce that
5 defense, the State gets to meet that defense. We
6 get an opportunity to tell you, the jury, through
7 witnesses, whether or not that's plausible,
8 whether or not that could happen, or whether or
9 not that's implausible.

10 And there's two ways to do that. First,
11 is the common sense way to do that. The vial
12 planting defense for Mr. Avery, and for the
13 defense team, is that either Mr. Lenk or
14 Mr. Colborn got through this door. All right.
15 They got through a door that they didn't have a
16 key to, and they got through a door that they
17 didn't have the code to. That's the first part
18 of this.

19 The next thing that they are asking you
20 to buy is that they knew that there was a file
21 someplace in the Clerk of Court's Office,
22 sometime between the 3rd and the 5th of November.
23 Now, why do I say the 3rd and the 5th, because
24 the 3rd is when Teresa is reported missing,
25 doesn't pay to plant evidence and to steal a vial

1 of blood before we know that it's going to do any
2 good. And the 5th is when Pam Sturm finds her.
3 So between the 3rd and the 5th they have to know
4 that this box actually exists.

5 They also need you to buy that they know
6 that there is a box within the box. That there
7 is a vial of blood inside of that particular box
8 in the Clerk's Office. They need you to
9 believe -- They need you to believe that they get
10 through a door they have no key, that they have
11 no code, they find a box that they don't know the
12 existence of, they find the vial that they don't
13 know the existence of, and then they are able to
14 get their hands on that vial of blood.

15 They also need you to believe that
16 nobody sees them do this, that they are able to
17 do that undetected, to secret it, again, to
18 remove it from the Clerk of Court's Office in
19 Manitowoc, to plant the blood, assuming they know
20 how to do that, in six different places.

21 I'm stopping right here, because I need
22 to. Because for the defense version to hold any
23 water at all, the van -- excuse me -- the SUV
24 can't be found yet. They have to plant the blood
25 before it's found. Again, there's only two ways

1 that they can do that. Either they kill this 25
2 year old girl, or they found her murdered
3 somewhere else.

4 And if they found her murdered somewhere
5 else, then weren't they taking quite a chance,
6 weren't Mr. Lenk and Colborn, if you admit or buy
7 what it is that these two gentlemen are selling,
8 wouldn't you have to agree that they took a
9 chance that this very 25 year old photographer
10 was also last seen alive by that man.

11 My God, they got lucky, didn't they. To
12 go and find the vial of blood, even assuming they
13 knew where it was, that the dead woman that they
14 had in their possession, theoretically, was also
15 the last person to have seen Mr. Avery. It
16 doesn't make sense. All right.

17 That's the common sense way to deal with
18 the vial of blood planting. By the way, because
19 the vial of blood is still in the Clerk's Office,
20 you have to reverse this process. You have got
21 to get the blood back after we do the planting.
22 We have to get through, again, the door that we
23 have no key to, and we have no code to, and into
24 the box, and get this thing secreted back in
25 there, undetected, with nobody seeing.

1 That's not reasonable. That's not a
2 reasonable doubt. Reasonable doubts are for
3 innocent people. Reasonable doubts are things
4 that juries adopt when all the evidence points to
5 that. And this planting, this vial planting
6 defense, even from a common sense standpoint, is
7 absolutely ludicrous.

8 But what we were able to do, what you
9 heard, is scientifically exclude that vial of
10 blood. You heard from Dr. LeBeau, who testified
11 that this blood is loaded with EDTA and this
12 blood, and this blood, and this blood, have no
13 detectable levels of EDTA. And so instead of
14 calling all of the people with keys and with
15 codes, and people in the Clerk's Office, and who
16 might have seen Lieutenant Lenk or Colborn, or
17 all those kinds of things, instead of doing it
18 that way, we only had to call one witness, who
19 scientifically could tell you that there is
20 absolutely no way that that vial of blood was
21 used to plant.

22 In fact, that very question was asked of
23 Dr. LeBeau, the head of the toxicology section,
24 or the unit at the FBI. And he said, by a
25 reasonable degree of scientific certainty, this

1 vial of blood is excluded, that means it's not
2 it, it's excluded as the source of those three
3 bloodstains.

4 Now, why is that important. Lieutenant
5 Lenk and Sergeant Colborn, as I mentioned
6 earlier, are good, decent, honest cops, sworn to
7 uphold the law. Kinds of officers Manitowoc
8 citizens should be proud to have on your police
9 force. They are the kinds of guys that you want
10 investigating cases for you, for Manitowoc
11 County. And again, they are not just some cops,
12 they are your cops, that's why a Manitowoc jury
13 decides this case.

14 This isn't just two guys, it's Jim Lenk
15 and it's Andy Colborn. And when you accuse
16 police officers of official misconduct, that's
17 serious business. Mr. Strang correctly predicted
18 that there would be some anger about this issue,
19 coming from the prosecution side, and there is.

20 Let me tell you why. Their livelihood,
21 their reputations, their families, everything in
22 their 20 plus years of law enforcement are on the
23 line, when some lawyer accuses them of
24 misconduct. Not just any misconduct, but
25 planting evidence in a murder case. All right.

1 Serious, serious business.

2 And as a representative of the State, as
3 the prosecutor in this case, I'm here to tell you
4 folks, that if you are going to allege that some
5 Manitowoc cop is crooked, that some Manitowoc cop
6 committed a crime, you better have something to
7 back it up. And when you don't, and when there
8 is a witness from the FBI who says that didn't
9 happen, and when common sense said, that didn't
10 happen, these men are owed an apology. Their
11 good name, their reputations, need to be restored
12 to them.

13 And Mr. Strang talked about what a
14 guilty verdict, or a not guilty verdict, may do
15 in this case. A guilty verdict is most
16 importantly attributed to whether or not
17 Mr. Avery committed these horrific acts in these
18 cases. But also the issue of official or police
19 misconduct should be something that angers you,
20 just as it angers me.

21 Mr. Buting said that he might have been
22 a little rough on Ms Culhane, that he owed her an
23 apology. I'm hoping that the comments that have
24 been directed towards Jim Lenk and towards Andy
25 Colborn, at the conclusion of this case, are also

1 met with an apology.

2 But what I heard yesterday, what I heard
3 yesterday, from Mr. Buting, when he suggested
4 that perhaps it was Teresa's lifestyle that
5 contributed to her homicide, I'm paraphrasing,
6 but he said, because she was at some party, what
7 do we know about this party that she was at on
8 Saturday, or what do we know about some phone
9 calls that she had gotten, or what do we know
10 about her living arrangements.

11 Do you blame a 25 year old homicide
12 victim? And when you suggest that that victim
13 had some responsibility, or something to do with
14 her own demise, you need to be held accountable
15 for that. You need to be taken to task for that.
16 And, again, as the prosecutor, I'm expressing my
17 indignance about that.

18 Any suggestion that these good people of
19 the Halbach family have to endure in listening to
20 Mr. Buting stand before you and say, what about
21 this woman's lifestyle, or what about this party,
22 or what about who she's living with, is
23 absolutely out of bounds, absolutely improper,
24 has no place in this case.

25 What does have a place in this case is

1 the facts. And now I have come full circle. And
2 at the conclusion of this, my final argument
3 before you, the jurors, you have seen, and should
4 see by now, the stark difference between the
5 State's facts, between our reliance on the facts,
6 and the defense necessarily relying upon
7 speculation.

8 Physical evidence, the DNA evidence, the
9 eyewitness testimony, the scientific evidence,
10 the big fire that Mr. Avery had, common sense all
11 point to one person and there's a reason for
12 that. As the jury in this case, you have a duty.
13 You have a duty to return what's called a true
14 verdict. You have a duty to search for the
15 truth.

16 I agree with Mr. Strang that you do have
17 a duty in this case, but I disagree when Mr.
18 Strang tells you that your finding of guilt in
19 this case is not going to solve the crime. It
20 is. It's going to solve the crime.

21 And I'm here to tell you, also, as the
22 prosecutor, and collectively, the three of us
23 prosecutors, with lots and lots of years of
24 experience, are also going to tell you that it
25 will provide closure. It will provide closure

1 for the Halbach family, at least in the legal
2 sense. And it's in the sense for what you are
3 charged to do, and that is to assign
4 responsibility. It's to assign accountability
5 for the death of Teresa Halbach.

6 I don't believe it is a difficult
7 decision. It's a complex series of facts. And
8 it is a very, very serious case. But it's not a
9 difficult case. It's not a difficult decision
10 that you have to make, because everything in this
11 case pointed towards one person, towards one
12 defendant.

13 I'm thanking you, at the conclusion of
14 this case, on behalf of the State of Wisconsin.
15 And urging you, urging you, to follow the Court's
16 instructions, to follow the evidence in the case,
17 and return verdicts of guilty. Thank you. Thank
18 you, Judge.

19 THE COURT: Now, members of the jury, the
20 duties of counsel and the Court have been performed.
21 The case has been argued by counsel. The Court has
22 instructed you regarding the rules of law which
23 should govern you in your deliberations. The time
24 has now come when the great burden of reaching a
25 just, fair, and conscientious decision of this case